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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1945

No. [redacted] 104

ECHO BAY WATERFRONT CORPORATION,
Petitioner,

vs.

THE CITY OF NEW ROCHELLE

PETITION FOR WRIT OF CERTIORARI TO THE COUNTY COURT OF WESTCHESTER COUNTY, NEW YORK, AND BRIEF IN SUPPORT THEREOF.

ALBERT RITCHIE,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1339

ECHO BAY WATERFRONT CORPORATION,
Petitioner,

vs.

THE CITY OF NEW ROCHELLE

PETITION FOR WRIT OF CERTIORARI TO THE COUNTY COURT OF WESTCHESTER COUNTY, NEW YORK, AND BRIEF IN SUPPORT THEREOF.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

This petition is filed to obtain a review and determination by this Honorable Court of the final judgment of the County Court of Westchester County, New York, entered the 25th day of April, 1945, upon the remittitur of the Court of Appeals of the State of New York, directing that certain real property situate in the City of New Rochelle, Westchester County, New York, belonging to the petitioner be conveyed in fee simple to the respondent toward the satisfaction of so-called tax liens held by the respondent.

Facts

On or about the 2nd day of July, 1928 the New Rochelle Coal & Lumber Company, then being the owner of certain real property located in the City of New Rochelle, known on the Tax Map of said City as Lots No. 1 and No. 50 in Block No. 100, and Lot No. 10 in Block No. 206, made and executed to the New Rochelle Trust Company, as Trustee, a certain mortgage or deed of trust dated on that day to secure the payment of bonds issued by said New Rochelle Coal & Lumber Company in the sum of $250,000.

That all of said bonds were duly issued for full value to various persons and corporations who thereupon became the owners and holders thereof in good faith.

That prior to the 10th day of October, 1940, the New Rochelle Coal & Lumber Company failed to comply with the conditions of said bonds and with said mortgage or deed of trust by failing to pay the taxes that became due on said premises and by failing to pay the interest on said bonds as in and by said bonds and mortgage provided.

That on or about the 10th day of October, 1940, the said New Rochelle Trust Company, as Trustee under said bonds and mortgage, brought an action to foreclose the same.

That in said action as provided under Sections 121 and 122 of the Real Property Law of the State of New York, proceedings were taken for the reorganization of said mortgage.

That thereafter and on or about the 29th day of January, 1941 by an order entered on that day a plan for the reorganization of said mortgage was duly approved by the Supreme Court in the County of Westchester, New York, whereby the bondholders or their representatives were authorized to buy in at the said foreclosure sale and to form a corporation to take the title to said property, to issue the stock thereof to the bondholders in proportion

to their holding of bonds and also to issue to the bondholders 3 per cent income bonds in an amount equal to that held by each respective bondholder.

That on or about the 21st day of February, 1941, said property was sold pursuant to the judgment of foreclosure and sale theretofore duly entered in the office of the Clerk of the County of Westchester, and the Echo Bay Waterfront Corporation, the petitioner herein which was organized pursuant to the plan approved as aforesaid, became the purchaser at said sale, and by deed duly dated the 21st day of February, 1941 and duly recorded in the office of the Clerk of the County of Westchester (Division of Land Records) in Liber 3892 of Conveyances, page 372, became the owner and holder of the real property above described and entered into possession thereof.

That there was duly issued to the bondholders under the deed of trust aforesaid in exchange for their bonds the stock and income bonds as provided in the plan of reorganization aforesaid and they are now the owners of all the stock and income bonds of the petitioner and the beneficial owners of the real property above described (R. 30, 33, 37).

That in the year 1939 by Chapter 392 of the Laws of that year, effective October 1, 1929, the legislature of the State of New York added to the Tax Law of that state Sections 161 and 162, copies of which laws are hereto annexed, and also by the same Act added to the Tax Law of the State of New York, Title 3 of Article 7-a of the Tax Law of that state, a copy of which law is hereto annexed.

That Section 161, Subdivision 1, of such Tax Law provides that Title 1 and Title 4 of this Article shall be effective only in a tax district which by resolution have adopted Title 2 or Title 3 or both Title 2 and Title 3 of this Article.

Section 162 of said Article provides that any tax district may elect either Title 2 or Title 3 of this Article, or both,

and such election shall be evidenced by resolution.

That on November 20, 1939, the respondent by its council by resolution purported to elect to Adopt Title 2 and Title 3 of Article 7-a of the Tax Law aforesaid, but the said resolution as proposed was never published, nor was it published after its adoption (R. 31).

That on May 1, 1941 the respondent for the first time filed a list of about eleven hundred parcels of real property upon which it claimed to have tax liens as defined in said Act, which had been unpaid for a period of at least four years or more after the date when the tax assessment or other legal charge represented thereby became a lien.

That in the list so filed the petitioner's property was described by the Lot and Block number as above set forth and the New Rochelle Coal & Lumber Company listed as owner against whom the property was assessed, but the name of the petitioner who was then the resident owner in possession was not mentioned in the said list (R. 27-28).

That pursuant to Section 165-b of said Act the respondent caused a notice of the filing of said list to be published in a newspaper published in the tax district and in another newspaper published in the county, which publication was commenced on the 1st day of May, 1941, and continued for six weeks thereafter.

That said notice stated that the filing of said list was the commencement of an action to foreclose tax liens therein described by foreclosure proceeding In Rem, that the said list remained open for public inspection up to and including the 26th day of June, 1941, which was thereby fixed as the last day of redemption, and that an answer might be served within twenty days after the date above mentioned as the last day of redemption (R. 24).

That in the published notice, however, the property subject of the action was in no way identified or described

either as it appeared on the list as filed, or otherwise, nor was the petitioner or the New Rochelle Coal & Lumber Company mentioned in said notice as the owner of the property in this petition described.

That there was also posted a copy of said notice as published in the office of the collecting officer, and as the respondent claims, in three other conspicuous places (R. 7).

That no copy of said notice was ever served upon the petitioner, no copy of said notice was ever posted on the property above described, nor was any copy of said notice ever mailed to said petitioner (R. 37-38).

That after the time to redeem had expired, as provided by the law and the notice aforesaid, the matter came to petitioner's attention and the petitioner served an answer, the only pleading provided for by the Act, in which it amongst other things alleged that the Act violated the provisions of the Constitution of the United States and especially in the particulars hereinafter set forth, as the issue herein.

That the property of the petitioner is worth many times the amount of the tax liens claimed by the respondent (R. 36).

That the respondent thereafter moved before the County Court for summary judgment striking out the defendant's answer and for judgment as by default, which motion was granted and judgment entered directing that the Director of Finance of the City of New Rochelle (the collecting officer of the tax district) execute a deed to the respondent conveying the petitioner's property to it in fee simple absolute in purported compliance with Section 165-h, Subdivision 6, of said Act.

That the petitioner appealed from the judgment of the County Court to the Appellate Division of the Supreme Court, Second Department, of the State of New York, where

such judgment was affirmed, and upon entry of the judgment upon the order of the Appellate Division appealed from said order and judgment to the Court of Appeals of the State of New York, where the same was affirmed and judgment upon the remittitur from the Court of Appeals was entered in the County Court on the 25th day of April, 1945.

The opinion of the County Court is found at page 38 of the record; that of the Appellate Division at page 75. The Court of Appeals wrote no opinion.

Section 166-g of the Act provides that the respondent shall be entitled to a writ of assistance with the same force and effect as if it had acquired the property by virtue of a mortgage foreclosure.

Issues

1. Is the notice provided for by the Act and given by the respondent sufficient to afford due process of law under the Fourteenth Amendment of the Constitution of the United States?

2. Does the judgment directing the conveyance of the petitioner's property to the respondent in fee simple absolute without sale, deprive the petitioner of the surplus value of the property over the amount of the tax liens upon it without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States, especially as the law was passed after the defaults occurred upon which the judgment is based?

Reasons for Granting the Petition

I. The petitioner was not given reasonable notice of the proceedings or given notice of the relief sought by the respondent and was divested of its property without due process of law.

a. The notice is to the effect that tax liens are being foreclosed against some properties by the respondent, but the

properties are not specified or identified in any way in the notice.

b. To make it reasonably probable that interested parties would get notice, the properties subject to the action should be specified, which could be done without imposing an unreasonable burden on the City.

II. The notice states that the property will be foreclosed, that is, sold to satisfy the liens on it with any surplus going to the owner, or others entitled thereto. This was not done but a judgment of forfeiture was entered and the surplus value confiscated. The City did not need to do this to raise revenue. For that purpose it must sell the property which it could just as well have done in the proceeding.

III. The State Court held that the petitioner's rights under the Fourteenth Amendment of the Constitution of the United States were not violated by this procedure.

IV. That the State Court thus decided a federal question of substance not heretofore determined by this Court.

V. That the question is of great and growing importance as the New York Act has been adopted by a number of tax districts in the state, and somewhat similar statutes have been adopted by several other states, and are being considered for adoption by still other states.

VI. That the Supreme Court of Michigan has twice held the statute of that state void where the provision for notice was like that of the New York Act in that it did not provide for due process of law within the meaning of the Fourteenth Amendment of the Constitution of the United States. (See: *Thompson v. Auditor General, 261 Mich. 424; Auditor General* v. *Dutcher, 275 Mich. 462.*

VII. That the Courts below have treated this action as an administrative and not a judicial proceeding contrary to the applicable decisions of this Court.

WHEREFORE, your petitioner respectfully prays that a certiorari may issue out of and under the seal of this court to the County Court of Westchester County, State of New York, commanding said Court to certify a full and complete transcription of all the proceedings in this cause. That said cause may be viewed and determined by this Honorable Court that the errors therein may be corrected, that the judgment of the said County Court may be revised as herein prayed for, and that the petitioner may have such other and further relief as may be appropriate.

ECHO BAY WATERFRONT CORPORATION,
By SEACORD, RITCHIE & YOUNG,
Attorneys.

ALBERT RITCHIE,
Of Counsel

STATE OF NEW YORK,
County of Westchester, ss.:

ALBERT RITCHIE, being duly sworn, deposes and says: that he one of the counsel for the petitioner herein, whose foregoing petition he prepared; that the facts stated therein and the allegations therein contained are true as he verily believes.

ALBERT RITCHIE.

Sworn to before me this 24th day of May, 1945.
CATHERINE A. PETTERSON,
Notary Public, Westchester County New York. [SEAL.]

Statutes Involved

ARTICLE VII—A.—ENFORCEMENT OF COLLECTION OF DELINQUENT TAXES ON REAL PROPERTY

TITLE 1. Short Title: Definitions: Application

§161. Short title; definitions.
§162. APPLICATION OF ARTICLE.

TITLE 2. Foreclosure of Tax Lien as in Action to Foreclose a Mortgage

§163. Notice to redeem.
§163-a. Redemption.
§163-b. Right of conveyance or foreclosure.
§164. Foreclosure of tax lien as in action to foreclose a mortgage.

TITLE 3. Foreclosure of Tax Lien by Action In Rem

§165. Foreclosure by action in rem.
§165-a. Filing of list of delinquent taxes.
§165-b. Public notice of foreclosure.
§165-c. Notice to mortgagee or lienor.
§165-d. Filing of affidavits.
§165-e. Trial of issues.
§165-f. Preference over other actions.
§165-g. Presumption of validity.
§165-h. Final judgment.

TITLE 4. General Provisions

§166. Priority of liens.
§166-a. Agreements between tax districts.
§166-b. Power of tax district to protect liens.
§ 166-c. Mailing tax bills.
§ 166-d. Publication of notices; distress and sale.
§ 166-e. Registering owner, mortgagee, et cetera.

§ 166-f. Tax sale and sale of tax lien.
§ 166-g. Writ of assistance.
§ 166-h. Consolidation of actions.
§ 166-i. Lands held for public use; right of sale.
§ 166-j. Certificate of sale as evidence.
§ 166-k. Deed in lieu of foreclosure.
§ 166-l. Severability of provisions.
§ 168-c.[1] Foreclosure of tax liens by cities; local laws.

TITLE 1. Short Title; Definitions; Application

§ 161. Short title and definitions.

1. Short title. This article may be cited as the "Uniform delinquent tax enforcement act." Title one and title four of this article shall be effective only in a tax district which shall by resolution have adopted title two or title three or both title two and title three of this article.

Definitions. When used in this article:

(a) "Tax district" means a county, city, town, village or school district, having power to enforce the collection of taxes on real property by tax sale.

(b) "Collecting officer" means any elected or appointed officer of any tax district empowered or charged by law to enforce the collection of tax liens on real property.

(c) "Tax lien" means any unpaid tax, assessment or other legal charge, which is a lien on real property whether or not the same be evidenced by a "transfer of tax lien," a "tax sale certificate," a "tax transcript," a "certificate of tax sale," or any other written instrument.

(d) "Tax sale" means the method by which a tax district enforces the payment of any delinquent tax lien by sale, whether the same be by a sale of the lands affected thereby or a sale of an estate for years, or otherwise.

[1] So in original. There are no present intervening sections.

3. Notwithstanding either or any of the definitions contained in subdivisions two of this section:

(a) The remedies prescribed by this article shall also be available to any city which is not empowered to conduct a tax sale;

(b) "Tax district" shall include a city having the power to enforce the collection of taxes on real property by foreclosure of its tax lien or liens;

(c) Where "collecting officer," as defined in subdivision two includes duties and powers vested in two or more elected or appointed officials, the local legislative body may designate which of said officials shall act as collecting officer for the purposes set forth in this article.

§ 162. Application of article.

1. Notwithstanding the provisions of any general, special or local law, any tax district may elect either title two or title three of this article, or both. Such election shall be evidenced by a resolution to such effect in substantially the following form: Resolution adopting title(s) ..... of article seven-a of the tax law in relation to the enforcement of delinquent taxes.

Resolved, that from and after ..... (here insert date), the ..... (here insert name of tax district) elects to adopt the provisions of title(s) ..... of article seven-a of the tax law for the purpose of enforcing the collection of delinquent taxes in such tax district. Such resolution may be adopted by the local legislative body of such tax district and a certified copy thereof shall be filed in the office of the county clerk of the county or counties in which such tax district is situated prior to the commencement of the first foreclosure proceeding under this article. Upon the adoption of such resolution the provisions of the title or titles of this article designated therein shall be applicable

to such tax district and in addition thereto the provisions of titles one and four of this article shall by operation of law be applicable to such tax district.

2. Any tax district after a period of at least one year from the adoption of such resolution may rescind such election by the adoption of a resolution to such effect, which resolution shall be adopted and filed in the same manner as said original resolution. Upon the adoption of a rescinding resolution the provisions of this article shall cease to be applicable to such tax district and the provisions of the laws in force therein prior to such election, relating to the foreclosure of tax liens, shall again become applicable to such district, together with any amendments to such laws. Neither an election to adopt the provisions of this article or any part thereof, nor an election to rescind the same, shall affect any action or proceeding for foreclosure of a tax lien commenced prior to such election or rescission and such action or proceeding may be continued in the same manner as though such election or rescission had not been made.

3. Whenever any tax district shall have adopted title two, or both title two and title three, of this article, the provisions of such title or titles shall supersede the provisions of all general, special or local laws relating to the foreclosure of tax liens by such tax district. Whenever any tax district shall have elected to adopt only title three of this article the provisions of such title shall not affect any existing remedy, action or proceeding for the enforcement of tax liens in such tax district less than four years old. (Added L. 1939, c. 692, § 2, eff. Oct. 1, 1939).

TITLE 3. Foreclosure of the Tax Lien by Action in Rem

§ 165. Foreclosure by action in rem.

Whenever it shall appear that a tax district owns a tax lien which has been due and unpaid for a period of at least four years from the date on which the tax, assessment or other legal charges represented thereby became a lien, such tax lien shall be summarily foreclosed by the tax district in the manner provided in this title, notwithstanding the provisions of any general, special or local law and notwithstanding any omission to hold a tax sale prior to such foreclosure. Ownership of a transfer of tax lien or of a tax sale certificate or of any other instrument evidencing such tax lien by the tax district issuing the same shall be evidence of the fact that the tax, assessment or other legal charges represented thereby have not been paid to the tax district or assigned by it. (Added L. 1939, c. 692, § 2, eff. Oct. 1, 1939.)

§ 165-a. Filing of list of delinquent taxes.

(1) Within three months after the date of adoption of a resolution electing to adopt title three hereof and on the first day of May in each year, thereafter, the collecting officer of such tax district shall file in the office of the clerk of the county in which the property subject to such tax liens is situated, a list of all parcels of property affected by unpaid tax liens held and owned by such tax district which on such date shall have been unpaid for a period of at least four years or more after the date when the tax, assessment or other legal charge represented thereby became a lien. Such parcels shall be numbered serially. The collecting officer shall file a certified copy of such list in the office of such collecting officer and in the office of the attorney for such tax district, and in the office of the collecting officer of any other tax district having a right to assess any of the parcels described upon such list. Such list shall be known and designated as the "List of Delinquent Taxes" and shall bear the following caption:

"—— court, —— county. In the matter of foreclosure of tax liens pursuant to article seven-a, title three of the tax law by —— (insert name of tax district). List of delinquent taxes for nineteen ——," and shall contain as to each parcel, the following:

(a) A brief description sufficient to identify each parcel affected by such tax lien. A description by stating the lot, block and section number or other identification numbers of any parcel upon a tax map, or a lot number or other identification number of any tract, the map of which is filed in the county clerk's or register's office, shall be a sufficient description.

(b) The name of the last known owner of such parcel as the same appears on the assessment roll of the tax district for the year preceding the calendar year in which such list is filed.

(c) A statement of the amount of each tax lien upon such parcel including those which shall have been due and unpaid for less than four years together with the date or dates from which and the rate and rates at which interest and penalties shall be computed.

Such list of delinquent taxes shall be verified by the affidavit of the collecting officer. The filing of such list of delinquent taxes in the office of the clerk of the county in which the property subject to such tax liens is situated shall constitute and have the same force and effect as the filing and recording in said office of an individual and separate notice of pendency of action, and as the filing in the county court of such county or, in the city of New York, in the supreme court in such county of an individual and separate complaint by the tax district against the real property therein described, to enforce the payment of the delinquent

taxes, assessments, or other lawful charges which have accumulated and become liens against such property.

Each county clerk with whom such list of delinquent taxes is filed shall index it in a separate book kept for that purpose to the name of the taxing district filing such list which shall constitute due filing, recording and indexing of such notice in lieu of any other requirement under section one hundred twenty-two of the civil practice act or otherwise. The county clerk shall be entitled to a fee of ten dollars for such receiving, filing and indexing of each such list in lieu of any other fees to which he might otherwise be entitled for such services except in counties having a block and section system of indexing *lis pendens* and in such counties the fee for filing shall be as provided by law.

The county court, except in the counties of the city of New York, and in those counties, the supreme court, is hereby given jurisdiction of actions authorized by this title.

(2) Every person including a tax district other than the one foreclosing having any right, title or interest in, or lien upon, any parcel described in such list of delinquent taxes may redeem such parcel by paying all of the sums mentioned in such list of delinquent taxes before the expiration of the redemption period mentioned in the notice published pursuant to section one hundred sixty-five-b, or may serve a duly verified answer upon the attorney for the tax district setting forth in detail the nature and amount of his interest and any defense or objections to the foreclosure of the tax lien. The caption of such answer shall contain a reference to the serial number or numbers of the parcels concerned. Such answer must be filed in the office of the county clerk and served on the attorney for the tax district foreclosing within twenty days after the date mentioned in the notice published pursuant to section one hundred sixty-five-b as the last day for redemption. In the event of failure

to redeem or answer by any person having the right to redeem or answer such person shall be in default and shall be barred and forever foreclosed of all his right, title and interest in and to the parcels described in such list of delinquent taxes and a judgment in foreclosure may be taken as herein provided. Upon redemption as permitted by this section, the person redeeming shall be entitled to a certificate thereof from the collector of the tax district describing the property in the same manner as it is described in such list of delinquent taxes. Upon the filing of such certificate with the county clerk, the county clerk shall note the word "redeemed" and the date of such filing opposite the description of said parcel on such list. Such notation shall operate to cancel the notice of pendency of action with respect to such parcel.

(Added L. 1939, c. 692, § 2, eff. Oct. 1, 1939.)

§165–b. Public notice of foreclosure.

Upon the filing of such list in the office of the county clerk, the collecting officer forthwith shall cause a notice of foreclosure to be published at least once a week for six successive weeks in two newspapers designated by him and published in the tax district. If there is only one newspaper published in such tax district, the collecting officer shall cause such notice to be published in such newspaper and in addition thereto in one other newspaper published in the county in which such tax district is situated. If no newspaper is published in the tax district, the collecting officer shall cause such notice to be published in two newspapers published in the county in which such tax district is situated and circulating in such tax district. If only one newspaper is published in said county then the collecting officer shall cause such notice to be published in such newspaper and also in a newspaper published in an adjoining county, and

if no newspaper is published in such county, he shall cause the same to be published in two newspapers published in an adjoining county. In New York and Bronx counties the newspapers to be designated for the publication of such notice or any other public notice required pursuant to this article shall be the daily law journal designated by the justices of the appellate division of the first judicial department and another newspaper designated by said justices pursuant to the provisions of subdivisions one and two of section ninety-seven of the judiciary law. Such notice shall be in substantially the following form: —— court, —— county. Notice of Foreclosure of Tax Liens by —— (here insert name of tax district)

By Action in Rem

Please take notice that on the —— day of —— the —— (insert name of collecting officer) of —— (insert name of tax district) pursuant to law filed with the clerk of —— county, a list of parcels of property affected by unpaid tax liens held and owned by said —— which on such date had been unpaid for a period of at least four years after the date when the tax, assessment or other legal charge represented thereby became a lien. Said list contains as to each such parcel, (a) a brief description of the property affected by such tax lien, (b) the name of the last known owner of such property as the same appears on the assessment roll of said —— for the last calendar year, or a statement that the owner is unknown if such be the case, (c) a statement of the amount of such tax lien upon such parcel including those which shall have been due for less than four years together with the date or dates from which, and the rate or rates at which, interest and penalties shall be computed.

All persons having or claiming to have an interest in the real property described in such list of delinquent taxes are

hereby notified that the filing of such list of delinquent taxes constitutes the commencement by said —— of an action in the —— court, —— county to foreclose the tax liens therein described by a foreclosure proceeding in rem and that such list constitutes a notice of pendency of action and a complaint by the said —— against each piece or parcel of land therein described to enforce the payment of such tax liens. Such action is brought against the real property only and is to foreclose the tax liens described in such list.

No personal judgment shall be entered herein for such taxes, assessments or other legal charges or any part thereof.

This notice is directed to all persons having or claiming to have an interest in the real property described in such list of delinquent taxes and such persons are hereby notified further that a certified copy of such list of delinquent taxes has been filed in the office of the —— (here insert title of the collecting officer) of said —— and will remain open for public inspection up to and including the —— day of —— (here insert a date at least seven weeks from the date of the first publication of this notice), which date is hereby fixed as the last day for redemption.

And take further notice that any person having or claiming to have an interest in any such parcel and the legal right thereto may on or before said date redeem the same by paying to the said —— (here insert title of collecting officer) the amount of all such unpaid tax liens thereon and in addition thereto all interest and penalties which are a lien against such real property, computed to and including the date of redemption. In the event that such taxes are paid by a person other than the record owner of such property, the person so paying shall be entitled to have the tax liens affected thereby satisfied of record or to receive an assignment of such tax liens evidenced by a proper written instrument.

Every person having any right, title or interest in or lien upon any parcel described in such list of delinquent taxes may serve a duly verified answer upon the attorney for the —— (here insert name of tax district) setting forth in detail the nature and amount of his interest and any defense or objection to the foreclosure. Such answer must be filed in the office of the county clerk and served upon the attorney for the tax district foreclosing within twenty days after the date above mentioned as the last day for redemption. In the event of failure to redeem or answer by any person having the right to redeem or answer, such person shall be forever barred and foreclosed of all his right, title and interest and equity of redemption in and to the parcel described in such list of delinquent taxes and a judgment in foreclosure may be taken by default.

—— ——,
—— ——,
(Name of office of collecting officer.)

—— ——,
Attorney for —— (tax district).

Address: ——.

The collecting officer shall on or before the date of the first publication of the notice above set forth cause a copy of such notice to be posted once in the office of the collecting officer, in the county court house of the county in which the property subject to such tax lien is situated and in three other conspicuous places within such tax district and shall cause a copy of such notice to be mailed to the last known address of each owner of property affected thereby, as the same appears upon the records in the office of the collecting officer, and in the event that the name or address of such owner does not appear in such records, the taxing officer shall so state in an affidavit which shall be filed in the office

of the county clerk. The collecting officer shall cause to be inserted with or attached to such notice a statement substantially as follows:

To the party to whom the enclosed notice is addressed:

You are the presumptive owner or lienor of one or more of the parcels mentioned and described in the list referred to in the enclosed notice.

Unless the taxes and assessments and all other legal charges are paid, or an answer interposed, as provided by statute, the ownership of said property will in due course pass to ———————— as provided by the tax law of the
(name of municipality foreclosing)
state of New York.

Dated —— ——.

—— ——,
Collecting Officer.

(Added L. 1939, c. 692, §2, eff. Oct. 1, 1939).

§165-c. Notice to mortgagee or lienor.

At any time after the enactment of this article, any owner of real property in such tax district, any mortgagee thereof, or any person having a lien or claim thereon, or interest therein may file with the collecting officer a notice stating his name, residence and post office address and a description of the parcel in which such person has an interest, which notice shall continue in effect for the purposes of this section for a period of five years, unless earlier cancelled by such person. The collecting officer shall mail to each such person forthwith after the completion and filing of the list of delinquent taxes as herein provided, a copy of each notice required under this title and affecting such parcel. The failure of the collecting officer to mail such notice as herein provided shall not affect the validity of any proceeding

brought pursuant to this title (Added L. 1939, c. 692, §2, eff. Oct. 1, 1939).

§ 165-d. Filing of affidavits.

All affidavits of filing, publication, posting, mailing or other acts required by this title shall be made by the person or persons performing such acts and shall be filed in the office of the county clerk of the county in which the property subject to such tax lien is situated and shall together with all other documents required by this title to be filed in the office of such county clerk, constitute and become a part of the judgment roll in such foreclosure action. (Added L. 1939, c. 692, § 2, eff. Oct. 1, 1939.)

§ 165-e. Trial of issues.

If a duly verified answer is served upon the attorney for such tax district within the period mentioned in the notice published pursuant to section one hundred sixty-five-b the court shall summarily hear and determine the issues raised by the complaint and answer in the same manner and under the same rules as it hears and determines other actions, except as in this act otherwise provided. Upon such trial, proof that such tax was paid, together with any interest or penalty which may have been due, or that the property was not subject to tax shall constitute a complete defense. Whenever an answer is interposed as herein provided, the defendant shall have an absolute right to the severance of the action as to any parcel or parcels of land in which he has an interest, upon written demand therefor filed with or made a part of his answer. (Added L. 1939, c. 692, § 2, eff. Oct. 1, 1939).

§ 165-f. Preference over other actions.

Any action brought pursuant to this title shall be given preference over all other causes and actions, and no such

action shall be referred except to an official referee and the county court is hereby given jurisdiction to make such reference. (Added L. 1939, c. 692, § 2, eff. Oct. 1, 1939.)

§ 165-g. Presumption of validity.

It shall not be necessary for the tax district to plead or prove the various steps, procedures and notices for the assessment and levy of the taxes, assessments or other lawful charges against the lands set forth in the list of delinquent taxes and all such taxes, assessments or other lawful charges and the lien thereof shall be presumed to be valid. A defendant alleging any jurisdictional defect or invalidity in the tax or in the sale thereof must particularly specify in his answer such jurisdictional defect or invalidity and must affirmatively establish such defense. The provisions of this title shall apply to and be valid and effective with respect to all defendants even though one or more of them be infants, incompetents, absentees or non-residents of the state of New York. (Added L. 1939, c. 692, § 2, eff. Oct. 1, 1939.)

§ 165-h. Final judgment.

(1) The court shall have power to determine and enforce in all respects the priorities, rights, claims and demands of the several parties to said action, as the same shall exist according to law, including the priorities, rights, claims and demands of the defendants as between themselves, and in a proper case to direct a sale of such lands and the distribution or other disposition of the proceeds of the sale. The court shall further determine upon proof and shall make findings upon such proof whether there has been due compliance by the tax district with the provisions of this title.

(2) Where as to any parcel included in the list described in section one hundred sixty-five-a of this chapter an answer

has been interposed by a party other than a tax district and the court shall determine that such party has any right, title, interest, claim, lien or equity of redemption in such parcel, the court shall make a final judgment directing the sale of such parcel.

(3) Where as to any parcel an answer has been interposed by another tax district and the court shall determine that such other tax district has an interest in such parcel and no party (other than a tax district) shall have answered, then and in that event the tax districts having an interest in such parcel may by agreement between themselves provide (a) for a conveyance without sale of any such parcel to one of such tax districts free and clear of any right, title or interest in or lien upon such parcel of such tax districts, or (b) for a conveyance without sale of any such parcel to one of such tax districts subject to any right, title or interest in or lien upon such parcel of such other tax district or districts. In either of such events the court shall in its judgment expressly dispense with the sale and direct the making and execution of a conveyance by the collecting officer in accordance with such agreement. In the absence of such an agreement the court shall make a final judgment directing the sale of such parcel.

(4) Any sale directed by the court shall be at public auction by the collecting officer. Public notice thereof shall be given once a week for at least three successive weeks in a newspaper published in the tax district, if any, or, if none, in a newspaper published in the county in which such tax district is situated. The collecting officer shall receive no fee or compensation for such service. The description of the parcel offered for sale in such notice shall be that contained in the list of delinquent taxes with such other description, if any, as the court may direct.

(5) In directing any conveyance pursuant to this title, the judgment shall direct the collecting officer of the tax district to prepare and execute a deed conveying title to the parcel or parcels concerned. Said title shall be full and complete in the absence of an agreement between tax districts as herein provided that it shall be subject to the tax liens of one or more tax districts. Upon the execution of such deed the grantee shall be seized of an estate in fee simple absolute in such parcel unless expressly made subject to tax liens of a tax district as herein provided, and all persons, including the state of New York, infants, incompetents, absentees and non-residents, except such tax district, who may have had any right, title, interest, claim, lien or equity of redemption in or upon such parcel, shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption.

(6) The court shall make a final judgment awarding to such tax district the possession of any parcel described in the list of delinquent taxes not redeemed as provided in this title and as to which no answer is interposed as provided herein. In addition thereto such judgment shall contain a direction to the collecting officer of the tax district to prepare, execute and cause to be recorded a deed conveying to such tax district full and complete title to such lands. Upon the execution of such deed, the tax district shall be seized of an estate in fee simple absolute in such land and all persons, including the state of New York, infants, incompetents, absentees and non-residents who may have had any right, title, interest, claim, lien or equity of redemption in or upon such lands shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption. (Added L. 1939, c. 692, § 2, eff. Oct. 1, 1939.)

TITLE 4. General Provisions

§ 166. Priority of liens.

In tax district in which the provisions of this title become effective, tax liens shall rank in priority as may now, or as may hereafter, be provided by law. (Added L. 1939, c. 692, § 2, eff. Oct. 1, 1939).

§ 166-a. Agreements between tax districts.

§ 166-b. Power of tax district to protect liens.

§ 166-c. Mailing tax bills.

It shall be the duty of the officer charged with the duty of receiving and collecting taxes, upon receipt of the assessment roll and warrant to prepare, complete, mail or otherwise deliver tax bills to the owners of property assessed so far as such owners and their addresses are known. But the failure of the collecting officer to mail such tax bills shall not invalidate or otherwise affect such tax nor prevent the accruing of any interest or penalty imposed for the non-payment thereof, nor prevent or stay proceedings under this article for any of the remedies for collection thereof, nor affect the title of the plaintiff or purchaser under such proceedings. (Added L. 1939, c. 692, § 2, eff. Oct. 1, 1939).

§ 166-d. Publication of notices; distress and sale.

(1) Before proceeding to enforce the collection of tax liens pursuant to this article, the collecting officer shall publish such notices as the general, special or local laws relating to his tax district shall require.

(2) Proceedings to enforce collection by distress and sale of personal property or other means of compulsory collection shall not be a condition precedent to the remedies

provided in this article. (Added L. 1939, c. 692, § 2, eff. Oct. 1, 1939).

§ 166-e. Registering owner, mortgage,[1] et cetera.

The owner of property liable to assessment, a mortgagee thereof, or a person having a lien or claim thereon, may file with the collecting officer a notice stating his name and post-office address, a description of the premises by metes and bounds or by number or other designation on the tax map, which notice shall continue in effect for the purposes of this section for the period of five years, unless earlier cancelled by such person. The collecting officer shall mail to each such person within ten days after first publication thereof, a copy of all notices of tax sale or sale of tax lien affecting such premises under this article, service of notice or process shall be made upon such persons who have filed a notice in respect to such premises. Such service may be made personally or by mail to the address designated in said notice. The failure to receive such notice as herein provided shall not affect the validity of any action or proceeding brought pursuant to this article. (Added L. 1939, c. 692, § 2, eff. Oct. 1, 1939).

§ 166-f. Tax sale and sale of tax lien.

(1) It shall be the duty of the collecting officer to enforce annually all tax liens by a tax sale, in accordance with the provisions of law governing the conduct of such sales, except as otherwise provided herein. The failure of the collecting officer to enforce such tax lien shall not impair the lien or prevent a sale or stay any other proceedings for its enforcement after the time specified. All provisions with respect to procedure upon tax sales and sales of tax liens requiring acts to be done at or within or before

[1] So in original. Probably should read "mortgagee."

specified times or dates, except provisions with respect to length of notice, shall be deemed directory and failure to take such action at or within the time specified shall not invalidate or otherwise affect such tax lien nor prevent the accruing of any interest or penalty imposed for the non-payment thereof, nor prevent or stay proceedings under this article for any of the remedies for collection thereof in this article provided, nor affect the title of the purchaser under such proceedings.

(2) In case there is no bid or no legally acceptable bid for any lot or parcel of land offered at such tax sale, the tax district shall by operation of law become the owner of the tax lien on such property with the same legal effect as though such tax lien had been purchased on the most advantageous terms permitted by law. The collecting officer shall forthwith execute a certificate of sale or other written instrument evidencing the ownership of such tax lien by such tax district in accordance with the provisions of law applicable to such tax district.

(3) Any property affected by a tax lien held and owned by a tax district and upon which there are delinquent taxes of the same district subsequent in time, shall be excluded from any subsequent tax sale of such district and the advertisement thereof. The tax lien representing any such subsequent delinquent taxes shall be deemed to have been bid in by the tax district as though it had been offered at such subsequent tax sale and purchased by such tax district on the most advantageous terms permitted by law. (Added L. 1939, c. 692, § 2, eff. Oct. 1, 1939).

§ 166-g. Writ of assistance.

Any party or tax district acquiring title to premises under and pursuant to the terms and provisions of this article shall be entitled to a writ of assistance, with the

same force and effect as if such party or tax district had acquired the property by virtue of a mortgage foreclosure. (Added L. 1939, c. 692, § 2, eff. Oct. 1, 1939.)

§166-h. Consolidation of actions.

Actions or proceedings pending in the courts, or otherwise, to cancel a tax sale of lands, a lien upon which is being foreclosed by action under this article, shall be terminated upon the institution of a foreclosure action pursuant to this article, and the rights and remedies of the parties in interest to such pending actions or proceedings shall be determined by the court in such foreclosure action (Added L. 1939, c. 692, §2, eff. Oct. 1, 1939).

§166-i. Lands held for public use; right of sale.

Whenever any tax district shall become vested with the title to lands by virtue of a foreclosure proceeding brought pursuant to the provisions of this article, such lands shall, unless actually used for other than municipal purposes, be deemed to be held by such tax district for a public use but for a period of not more than two years from the date of the final judgment. Such tax district is hereby authorized to sell and convey such lands so acquired, either with or without advertising for bids, notwithstanding the provisions of any general, special or local law. No such sale shall be effective unless and until such sale shall have been approved and confirmed by a majority vote of the governing body of the tax district (Added L. 1939, c. 692, §2, eff. Oct. 1, 1939).

§166-j. Certificate of sale as evidence.

The certificate of sale or any other written instrument representing a tax lien shall be presumptive evidence in all courts in all proceedings by and against the purchaser and his representatives, heirs and assigns, of the truth of the

statements therein, of the title of the purchaser to the property therein described, and of the regularity and validity of all proceedings had in reference to the taxes, assessments or other legal charges for the non-payment of which the tax lien was sold and the sale thereof. After two years from the issuance of such certificate or other written instrument, no evidence shall be admissible in any court to rebut such presumption unless the holder thereof shall have procured such certificate of sale or such other written instrument by fraud or had previous knowledge that it was fraudulently made or procured (Added L. 1939, c. 692, §2, eff. Oct. 1, 1939).

§166-k.[1] Deed in lieu of foreclosure.

Any tax district may when authorized by resolution of its governing body and in lieu of prosecuting an action to foreclose a tax lien on any parcel pursuant to this article accept a conveyance of the interest of any person having any right, title, interest, claim, lien or equity of redemption in or to such parcel (Added L. 1939, c. 692, §2, eff. Oct. 1, 1939).

§166-l. Severability of provisions.

The powers granted and the duties imposed by this article and the applicability thereof to any persons, tax districts or circumstances shall be construed to be independent and severable and if any one or more sections, clauses, sentences or parts of this act, or the applicability thereof to any persons, tax districts or circumstances shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof or the applicability thereof to other persons, tax districts or circumstances, but shall be confined in its opera-

[1] So in original. Section symbol evidently should be inserted preceding number.

tion to the specific provisions so held unconstitutional and invalid and to the persons, tax districts and circumstances affected thereby (Added L. 1939, c. 692, §2, eff. Oct. 1, 1939).

§168-c.[1] Foreclosure of tax liens by cities; local laws.

Notwithstanding any of the provisions contained in this chapter and in addition to the right to foreclose tax liens as contained in local charters, every city is hereby authorized and empowered by local law to provide that the right of such city to receive taxes and assessments and the lien therefor, may be sold at public sale by such city and that after such sale it may transfer the same to a purchaser and that the city may become the purchaser at such sale or sales under such terms and conditions as may be prescribed in said local law.

Such local law shall provide how frequently the sales shall be held, what rate of interest may be exacted by the purchaser, but in no event in excess of twelve per centum per annum, and shall contain such other provisions as may be necessary to effectively provide for a means of the sale of the aforesaid right to receive taxes and assessments.

Provisions of the tax law of the state of New York including any amendments thereto relating to the institution of actions for the foreclosure of tax liens shall apply to the foreclosure of tax liens sold pursuant to any such local law.

(Added L. 1939, c. 835, eff. June 13, 1939).

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[1] So in original. There are no present intervening sections.

BRIEF IN SUPPORT OF PETITION

I

The Court of Appeals erred in upholding the notice as adequate.

1. The petitioner was a known resident-owner in possession of the property at the time that the action was started.

There was no seizure of the property. Under such circumstances, the notice published and posted should have identified the property subject to the action at least by the block and lot number, and might well have included the name against which it was assessed as the owner thereof, in order to render it reasonably probable that the parties interested in the property would get notice in time to redeem.

The only possible objection to this suggestion is the cost of printing such notice. This would have been trifling with several million dollars worth of property involved and would have cost but a few hundred dollars more to print such identification of the property, which would mean but a few cents as to each parcel.

Indeed, while this is claimed to be an action In Rem, there can be no lawsuit without parties. (See: *Elmendorf* v. *DeLancey*, I Hopkins Ch. (N.Y.) 555; *MacAffer* v. *Boston & Maine R. R. Co.* 242 App. Div. 140, 144, 1 C. J. 982, and cases cited.)

In actions In Rem the property is named as the defendant (see: *Freeman* v. *Alderson* 119 U. S. 185). In New York State, an action is commenced by the service of a summons (*C. P. A.* Section 218). The summons must name the parties (*C. P.* Rule 50). (See: *Leonard* v. *Price*, 182 N. Y. 431, 433.) Here no property is named in the notice (tak-

ing the place of a summons) as defendant. Yet the judgment is entered against specified property. It would seem clear that such notice was inadequate to afford due process of law. (See: *Wuchter* v. *Pizzuti*, 276 U. S. 13; *Central of Georgia* v. *Wright*, 207 U. S. 127; *Davidson* v. *New Orleans*, 96 U. S. 97; *Stuart* v. *Palmer*, 74 N. Y. 183.)

This scant notice is sought to be justified on the ground that this is an administrative and not a judicial proceeding, because it is for the collection of tax liens; yet the City sought and got a final judgment directing the transfer of petitioner's property to it. This creates a conclusive presumption and not merely a PRIMA FACIE one. It may be followed by writ of assistance ousting petitioner from possession. A judgment creating a conclusive presumption and writ of assistance to enforce the same can only be granted in judicial proceedings. It is plain that this is a judicial and not an administrative proceeding.

See:

Milwaukee County v. *White & Co.*, 296 U. S. 268;
Marx v. *Hanthorne*, 148 U. S. 72;
Londoner v. *Denver*, 210 U. S. 373, 376;
King v. *Mullins*, 171 U. S. 404;
Thompson v. *Auditor General*, 261 Mich. 424;
Auditor General v. *Dutcher*, 275 Mich. 462.

Administrative proceedings contemplate that judicial proceedings may follow before the presumption becomes final.

See:

Marx v. *Hanthorne*, 148 U. S. 172;
Anderson National Bank v. *Luckett*, 321 U. S. 233, 88 Law Ed. 499, 507;
People v. *Ladew*, 237 N. Y. 413, 422, 423.

This is a drastic statute. It provides only for one week's time to redeem after service of the summons is complete.

Before the notice came to petitioner's attention, the time to redeem had passed and its property was lost. This is an important factor to be taken into account in considering the sufficiency of the notice.

2. The notice does not warn those interested that the property would be forfeited to the City as was done by the judgment. The notice says that there will be a foreclosure of the property. Foreclosure in New York means a sale of property to satisfy the liens upon it, with the surplus being paid to those entitled thereto (*C. P. A. Section 1082; Moulton* v. *Cornish*, 138 N. Y. 133, 143, and *Thomas* v. *Harmon*, 122 N. Y. 84, 89). As the property here is worth many times the amounts of the liens against it, a considerable surplus could be expected in case of sale.

See:

United States v. *Lawton*, 110 U. S. 146;
Southerland v. *City of Brooklyn*, 156 N. Y. 605;
People ex rel. McColgan v. *Palmer*, 10 App. Div. 395.

The notice not having apprised the parties interested that this surplus would be confiscated it did not meet the requirements of due notice. (See: *Hassall* v. *Wilcox*, 130 U. S. 493, 504; *Windsor* v. *McVeigh*, 93 U. S. 74.)

II

The Court Erred in Upholding the Judgment of Forfeiture

1. Prior to the passage of this act in 1938, the City had no right to confiscate the property for failure to pay taxes or assessments or to have it declared forfeited for such reason. Other methods, however, were provided for the collection of revenue. (See: *County Securities, Inc.* v. *Seacord*, 278 N. Y. 34).

This act, however, gives the City the right to enter judgment of forfeiture for the default in payment of tax liens

(Section 165-h, Subdivision 6). As construed and applied, the act covers defaults occurring several years before its passage, and thus it is retroactive.

2. The property was worth many times the amount of the tax liens upon it. It could be sold at auction in the proceeding as well as being taken by the City, and afterwards sold at auction. It had to be sold in order to raise revenue. Thus by the judgment the surplus value of the property was confiscated.

Thus by retroactive regulation which is arbitrary and unreasonable, the petitioner is deprived of its property in which it had a vested right, without due process of law. This right of confiscation or forfeiture is a new right, not a new remedy. (See: *Truax* v. *Corrigan*, 257 U. S. 312; *Jacobus* v. *Colgate*, 217 N. Y. 235; *Germania Bank* v. *The Suspension Bridge*, 159 N. Y. 62.) That it deprives the petitioner of its vested rights.

See:

United States v. *Lawton*, 110 U. S. 146;
Welsh v. *Henry*, 305 U. S. 134, 147;
People v. *O'Brien*, 111 N. Y. 1;
Ostrander v. *Reiss*, 206 N. Y. 448, 453;
Matter of Lacidem Realty Corp. v. *Graves*, 288 N. Y. 354;
Spitcausky v. *Hatton*, 182 S. W. 2nd (Mo.) 86, 106;;
Ettor v. *Tacoma*, 228 U. S. 148.

III

The prayer of the petitioner that a writ of certiorari issue should be granted.

Respectfully submitted,

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(8634)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 1339.

ECHO BAY WATERFRONT CORPORATION,
Petitioner,

vs.

THE CITY OF NEW ROCHELLE.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI.

CHARLES S. RHYNE,
Counsel for Respondent.

AARON SIMMONS,
Director of Law of the City of New Rochelle.

THE COURT PRESS, N. Y. C.

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IN THE

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THE CITY OF NEW ROCHELLE.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI.

Facts.

Respondent desires to qualify a few facts contained in the petition. Petitioner alleges (p. 4) that its name was not contained in the List as owner of the property in question but rather that the name of the New Rochelle Coal & Lumber Company, its predecessor appeared. This was done in conformity with Section 165-a, Subdivision 1-b of the Tax Law (p. 14) which requires that the name of the person be included in the List who was the last known owner of the property as the same appeared on the assessment roll for the year preceding. This List in question was filed May 1st, 1941 (fol. 17) and since petitioner did not become owner of the property until February 21st, 1941 (fol. 51) its name could not have been included

as owner under the aforementioned provisions of the Tax Law. There are 1,100 parcels involved in this proceeding and of necessity considerable time was required in preparing the detailed information and accordingly the changes in ownership occurring a short time prior to the filing of the List could not be considered.

The petitioner alleges that in the published notice the property which was the subject of the action was in no way identified or described (p. 4). The notice (fol. 39) specifically states that a List of the parcels affected under foreclosure was on file and states that such List contains a description of each parcel affected, the name of the last known owner, a statement of the amount of taxes due, etc.

The motion made by the respondent for summary judgment did not request that the Court direct the Director of Finance of the City of New Rochelle to execute a deed to the City of New Rochelle but sought an order striking out the amended answer as insufficient in law and for such further relief as to the Court seemed just and proper (fols. 9, 10). The County Court granted respondent's motion for summary judgment and signed an order directing the Director of Finance to convey the property in question to the City of New Rochelle (fol. 8). Petitioner could have moved to resettle this order and could have requested a sale of the property and a disposition of the surplus, if any, pursuant to Section 165-h, Subdivisions 1 and 2 of the Tax Law (pp. 22, 23). The petitioner however did not avail itself of these provisions of the Tax Law.

Issues.

The two issues as presented in the petition have heretofore been determined by this Court:

1. (A) As to the notice, this Court has sustained similar statutes where similar notice has been served.

   (B) This Court has held that due process of law does not require a notice in the collection of taxes where an opportunity to be heard was given when the tax was levied.

2. This Court has held that upon failure to pay taxes duly levied against real estate the State Legislature may provide for a forfeiture of the property against which the tax is a lien. By Section 165-h, Subdivisions 1 and 2 of the Tax Law the Legislature has provided for the sale of property for non-payment of taxes and for distributing the proceeds of the sale. In the present case the petitioner did not see fit to avail itself of these sections by moving to resettle the final order entered herein.

As to the Alleged Reasons for the Issuance of the Writ.

While the notice did not describe the property being foreclosed it did specifically apprise those interested of the fact that the Delinquent List had been filed and that such List contained a description of the property, the name of the last known owner and the amount due. This Court has held that owners of real estate are presumed to know that their properties are subject

to tax and that upon failure to pay the same proceedings will be instituted to effect collection. Therefore, any notice which informs a property owner that foreclosure proceedings are being commenced against property four years in arrears in taxes is sufficient notice. In any event the notice refers to a list which contains the proper description of the property and if an owner is at all interested in his property it is notice to him to examine the List to ascertain if his property is therein included.

Argument.

I.

The Court of Appeals did not err in upholding the notice as adequate.

Sections 165 to 165-h of the Tax Law (pp. 12 to 22 inc.) in question here provide for a method of collecting taxes duly levied. The levying of the tax is provided by Charter and State law and prior to the actual levy of the tax a person is given an opportunity to appear and be heard in regard to the tax and to review the same by a Court proceeding (Sections 290-303 inc. of the Tax Law of the State of New York).

Due process in tax cases requires that a person shall have an adequate opportunity to be heard before a tax is levied. It does not require notice in any process designed to enforce the collection of a tax legally levied.

Spencer v. *Merchant*, 125 U. S. 345, 356;
Hagar v. *Reclamation Dist. No. 108*, 111 U. S. 701, 711;

Paulsen v. *City of Portland*, 149 U. S. 29, 41;
Palmer v. *McMahon*, 133 U. S. 660, 669;
City of New York (801-815 E. N. Y. Avenue), 290 N. Y. 236, 241.

In any event the notice as prescribed by statute and given is adequate to comply with the requirements of due process. The form and contents of the notice and the Delinquent List is prescribed by statute (Sections 165-a, 165-b of the Tax Law of the State of New York, pp. 13-16). The Tax Law provides that the notice shall be served:

1. By publication;
2. By mailing;
3. By posting (Section 165-b of the Taw Law).

These methods of serving notice have been approved by this Court and by the New York Courts.

Ballard v. *Hunter*, 204 U. S. 241, 262;
Leigh v. *Green*, 193 U. S. 79;
Ontario Land Co. v. *Wilfong*, 223 U. S. 543;
Winona v. *Minnesota*, 159 U. S. 526;
Longyear v. *Toolan*, 209 U. S. 414;
City of Utica v. *Proite*, 178 Misc. 925 (affd. 288 N. Y. 477);
City of Buffalo v. *Hawks*, 226 App. Div. 480 (affd. 251 N. Y. 588).

The Legislature in its discretion may prescribe the method of enforcing the collection of taxes.

Leigh v. *Green*, 193 U. S. 79, 87;
Gautier v. *Ditmar*, 204 N. Y. 20, 26.

Due process does not require that there be a judicial proceeding (*Palmer* v. *McMahon*, 133 U. S. 660) and accordingly there need not be any parties to the process prescribed (*Leigh* v. *Green*, 193 U. S. 79, 91). The same notice as is required in usual Court proceedings is not required in tax cases.

> *Bell's Gap RR. Co.* v. *Pennsylvania*, 134 U. S. 232, 239;
> *Leigh* v. *Green*, 193 U. S. 79, 89;
> *Ballard* v. *Hunter*, 204 U. S. 241, 262.

The collection of taxes is an administrative act and not a judicial proceeding and even though judicial assistance is invoked as a matter of convenience it does not become a judicial proceeding.

> *City of N. Y. (801-815 E. N. Y. Avenue)*, 290 N. Y. 236, 241;
> *McMahon* v. *Palmer*, 102 N. Y. 176, 189;
> *Matter of Trustees*, 31 N. Y. 574, 583;
> *Cooley on Taxation*, 4th Ed., Sections 1400 and 1326;
> *Hagar* v. *Reclamation District*, 111 U. S. 701, 711;
> *Leigh* v. *Green*, 193 U. S. 79, 89.

Petitioner claims that adequate time is not given for redemption. Section 165-b of the Tax Law (p. 16) requires the notice to be published at least once a week for six successive weeks. In the present case the notice was published May 5th, 1941 and allowed up to June 26th, 1941 as a period of redemption (R., fols. 40, 41). The right of redemption is purely

statutory and can be exercised only in the manner prescribed by the statute.

Keely v. *Sanders*, 99 U. S. 441, 445;
Levy v. *Newman*, 130 N. Y. 11, 14;
Mabie v. *Fuller*, 255 N. Y. 194, 201.

The notice sufficiently advised persons interested of the results that would ensue if the property was not redeemed. The notice stated that in the event of failure to redeem or answer persons interested would be forever barred and foreclosed of all their right, title and interest and equity of redemption in the property and a judgment in foreclosure would ensue (R., fol. 42). Section 165-h, Subdivision 6 of the Tax Law provides that in the event of a default the final judgment shall direct the Collecting Officer to execute a deed to the property to the Tax District.

All persons are presumed to know that taxes against real estate are to be levied and that appropriate action will be taken in case of non-payment and therefore are presumed to know the procedure outlined in tax statutes for the enforcement of tax collection.

North Laramie v. *Hoffman*, 268 U. S. 276, 283;
Mabie v. *Fuller*, 255 N. Y. 194, 201;
Ontario v. *Yordy*, 212 U. S. 152, 157;
Huling v. *Kaw Valley R. & Improvement Co.*, 130 U. S. 559.

II.

The judgment in question was properly affirmed by the Court.

The Legislature may provide for forfeiture or sale of property on failure to pay taxes,

> *Cooley on Taxation,* 4th Ed., Section 1350;
> *Kentucky Union* v. *Kentucky,* 219 U. S. 140.

In the case at bar the Tax Law provides for a sale of the property and a disposition of the proceeds thereof in a proper case (Section 165-h-1 and again Section 165-h-2). Petitioner did not request a sale of the property nor did it contend that the Court committed error in directing a conveyance of the property to the Tax District. Its contention was directed against the validity of the statute (Opinion of the Appellate Division in this case, R. fol. 85).

Petitioner if it desired a sale of the premises in conformity with the aforesaid provisions of the Tax Law could have moved to resettle the order entered by the Court.

> *Rule 70 of the Rules of Civil Practice,* Supreme Court, New York State;
> *Matter of Roberts Electric Supply Co., Inc.,* 131 Misc. 119, 124;
> *Ruland* v. *Tuthill,* 187 App. Div. 314, 315.

Having failed to do so it cannot raise this question which involves State Court procedure on this application.

Statutes which provide for a method of collecting taxes may be applied retroactively since they deal with new remedies and not with new rights.

J. C. League v. *State of Texas*, 184 U. S. 156;
Phillips v. *Commissioner of Internal Revenue*, 283 U. S. 589, 601;
City of New York (801-815 E. N. Y. Ave.), 290 N. Y. 236, 241.

III.

The prayer of the petitioner that a writ of certiorari issue should be denied.

Respectfully submitted,

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